IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3686 of 1999

With

SPECIAL CIVIL APPLICATION No. 4350 of 1999

TO

SPECIAL CIVIL APPLICATION No. 4379 of 1999

With

SPECIAL CIVIL APPLICATION No. 1961 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT AGRICULUTRAL UNIVERSITY - Petitioner(s)

Versus

MALDE VEJABHAI ODEDARA & 1 - Respondent(s)

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Appearance :
MR DG CHAUHAN for Petitioner(s) : 1,
MR TR MISHRA for Respondent(s) : 1,
MR UT MISHRA for Respondent(s) : 1,
UNSERVED-EXPIRED (N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/02/2006

ORAL JUDGMENT

1. S.C.A.No.3686 of 1999 is filed by Gujarat Agriculture University, Junagadh through its Campus Director from Junagadh against 31 workmen and also against M/s. Girnar Security Service, praying for quashing and setting aside the impugned award dated 24.12.1998 passed by the Presiding Officer, Labour Court, Junagadh in Reference (LCJ) No.316 of 1990 to 346 of 1990 and further praying for declaration that the respondents workmen are not entitled to any relief claimed in the references.

2. The court has passed an order on 15.09.1999 permitting the petitioner to delete names of respondent nos.2 to 31. The Court has also granted ad-interim relief in terms of Para:17(B) of the petition, whereby the impugned award passed by the Labour Court, Junagadh in Reference (LCJ) No.316/99 to 346/99 on 24.12.1998 was stayed. Thereafter, the petitioner has filed separate petitions being

S.C.A.Nos.4350/99 to 4379/99 against each of the workmen separately and the same were tagged with main petition being SCA No.3686/1999. During the pendency of the aforesaid petition, 8 petitioners have filed S.C.A.No.1961 of 2005 before this Court challenging the award passed by the Industrial Tribunal on 18.10.2004 in Reference (IT) No.46/1986, whereby the reference was rejected by the Industrial Tribunal. These petitioners have also prayed for the direction to the respondent to grant all the benefits as per the dispute raised by the petitioners' union i.e. Saurashtra Mazdoor Sangh by directing the respondent to treat the petitioners as permanent employees and grant benefits which the permanent employees of the University are entitled.

3. This Court has passed an order in S.C.A.No.1961 of 2005 on 15.02.2005 issuing the rule and admitting the petition. The Court has observed, on the basis of the submissions, made by Mr.T.R.Mishra, learned advocate appearing for the petitioner in the said petition, that the very

petitioners who are before the Court, being aggrieved by the judgment and award dated 18.10.2004 passed in Reference No.46 of 1986 wherein question of regularization of the petitioners was under consideration before the Industrial Tribunal, Rajkot, were the parties to Reference (LCJ) Nos.316/90 to 346/90 (New), Reference Nos.363 to 393/85 (Old). The Court has also observed that this very petitioners were ordered to be reinstated on their original post with continuity of service and 60% back wages with consequential benefits by judgment and order dated 24.12.1986. This award is the subject the matter of S.C.A.No.3686 of 1999, filed by the Gujarat Agricultural University. The Court has also observed that the learned member of the Industrial Tribunal, Rajkot has come to the conclusion that the petitioners are not workmen under Section 2(S) of the Industrial Dispute Act, 1947 and has rejected the reference.

4. Since common issues are involved and parties are also common, all these matters ordered to be heard

together and accordingly they are heard together.

5. In S.C.A.No.3286 of 1999 and S.C.A.No.4350 of 1999 to 4379 of 1999, the case of the petitioner university was that all the 31 respondent workmen were not engaged by the petitioner university , but they were engaged by the Respondent No.32 i.e. Security Contractor and they were the employees of security contractor. There is no jural relationship of master and servant between the respondents workmen and the petitioner University. They were engaged by respondent no.32 after 01.03.1984 and on different dates as Security Guards and worked upto 30.09.1984. None of the respondent workmen have completed 240 days continuous service as required under the Industrial Dispute Act. No evidence was led by the individual workman to prove his case except two employees (Exhs.26 and 27). That the Labour Court having held that there is no dispute about the facts that the respondents workmen were not employed by the petitioner University but they were the employees of the Security Services and after introduction of the new security contract,

the concerned workmen were relieved. The Labour Court ought to have held that the respondents workmen are not entitled for any relief against the petitioner University, however, the Labour Court ignoring and overlooking the oral and the documentary evidence on record, assumed certain facts in favour of the respondents workmen and made assertions that the concerned respondents are the employees of the petitioner University and, therefore, failed to apply the correct principle applicable in the present case and directed the petitioner University to reinstate all the 31 Security Guards on their original post with continuity of service and with 60% back wages. The said directions were wholly untenable and the Labour Court had exceeded its jurisdiction in granting the reinstatement and with 60% back wages and being aggrieved by the said order, petitions were filed before this Court.

6. Mr.D.G.Chauhan, learned advocate appearing of the petitioner has submitted that impugned award is patently illegal, erroneous and based on

misconception of law and facts and suffers from serious infirmities and manifest error of law and facts apparent on the face of the record and hence, the same is required to be quashed and set aside.

7. He has further submitted that the Labour Court failed to appreciate that the petitioner is not the employer of respondent workmen and they were not engaged by the petitioner but they were engaged by respondent no.32 – Security Contractor. There is no jural relationship of master and servant between the petitioner and the respondents workmen and, therefore, the Labour Court ought to have held that the respondents workmen are not entitled for any relief against the petitioner University and ought to have rejected all the References. He has further submitted that the Labour Court failed to appreciate that none of the respondents-Security Guards have completed 240 days continuous service and hence, the provisions of Section 25-F have no application in the facts and circumstances of the case. The respondents failed to prove that they have completed 240 days continuous service.

He has further submitted that the Labour Court has acted under complete misconception of law and facts and has made no genuine attempt to appreciate the impact of the decisive evidence on record and that has resulted in complete misjudgment and making erroneous award against the petitioner who is not the employer of the concerned respondents. The direction against the petitioner to reinstate all the 31 respondents-Security Guards on their original position with 60% back wages is wholly untenable and without jurisdiction. He has further submitted that the Labour Court has completely misdirected itself in law by its entirely erroneous and misconceived approach and committed manifest error of jurisdiction that the decisive evidence of witness (Exhibit 39 and Agreement Exhibit 41) have not been referred to and evaluated in the award and hence the award suffers from serious infirmities and requires to be quashed. He has also submitted that the Labour Court has fallen into obvious error of law in not considering the well settled principle of law laid down by the Hon'ble Supreme Court that the workman has to prove that he has

completed 240 days continuously and if he has not completed 240 days, he is not entitled for any relief of reinstatement and back wages. He has further submitted that findings of the Labour Court are absolutely perverse and based on conjectures and surmises and have assumed certain facts in favour of the respondents workmen which are not warranted by law or supported by the evidence on record. The Labour Court has made out altogether a new case for the respondents workmen which is not permissible under the law. That the Labour Court erred in holding that the concerned labourer has continuously worked as required under Section 25-B of the ID Act and further erred in holding that the petitioner has committed breach of the provisions as required under Section 25-F of the Act. He has further submitted that the Labour Court further erred in holding that each workman has completed 240 days. It is submitted that in view of the law laid down by the Hon'ble Supreme Court and this Court, the burden lies on the workman to prove that he has completed 240 days. Therefore, the Labour Court has seriously erred in holding that the

petitioner has not laid any evidence rebutting the evidence led by the respondents workmen. He has further submitted that the Labour Court seriously erred in accepting the oral evidence of Shri Rustam Rahema (Exh.26) and the oral evidence of Shri Amarsingh Rathod (Exh.27) in absence of any documentary evidence in support thereof. It is evidently clear from the Demand Notice dated 03.10.1983 (Exh.23) that all the respondents workmen had worked for six months only. Thus, the oral evidence led by the respondents workmen is inconsistent with the basis upon which the respondents approached the Labour Court and, therefore, the Labour Court ought to have ignored the same. He has further submitted that the Labour Court failed to appreciate that the concerned respondents were the employees of respondent no.32 and their Attendance Registers and Wage Registers were being maintained by respondent no.32 Contractor and, therefore, the Labour Court erred in holding that the petitioner had not produced the Wage Register of the concerned workman. The whole approach is erroneous. He has further submitted

that in view of the findings of the Labour Court i.e.

(i)there is no dispute about the facts that the respondents workmen were not employed by the petitioner but they were the employees of the security service, and,

(ii) after termination of old contract and introduction of new contract, the concerned workmen were relieved.

the respondents workmen were not entitled to any relief against the petitioner.

8. Though the respondents were duly served, no affidavit in reply was filed. Mr.T.R.Mishra, learned advocate appearing for respondents, has made faint attempt to defend the order passed by the Labour Court, however, he is not in a position to substantiate the findings arrived at by the Labour Court which is against the evidence on record.

9. So far as the petition filed by 8 workmen are concerned, it is the case of the petitioners that petitioners have been working with the University as Watch and Ward Staff. There were total 77 employees. However, during the pendency of adjudication proceeding before the Industrial Tribunal, many of them have left, retired or secured employment somewhere else. It is further stated that Government of Gujarat vide order dated 28.02.1986, referred the dispute to the Industrial Tribunal, Rajkot. The union i.e. Saurashtra Mazdoor Sangh of which the petitioners were the members, submitted the statement of claim vide Exh.2. The respondent University submitted written statement dated 28.07.1986. Thereafter, the evidence of one of the petitioners Shri Rustam S/o. Rehman was recorded vide Exh.17. Another workman Shri Mahadevsing Subedarsing was also recorded vide Exh.38. The respondent examined an employee of University Shri Bhanushanker Prabhashanker Joshi, vide Exh.50 and another witness Shri Babubhai D.Khorasia vide Exh.52. Thereafter, the Industrial Tribunal vide Exh.73 passed Award rejecting the

said reference vide order dated 18th October, 2004.

10. Mr.Mishra learned advocate appearing for petitioners workmen in this petition, has submitted that the petitioners have been working since 1978 onwards continuously and uninterruptedly but they were treated as contract labour and their attendance were not marked on the record and register of the University. He has further submitted that the University has not obtained any registration and/or licence under the provisions of Contract Labour Act till the dispute was raised and agitated before the labour court. At the fag end of termination of service, the University immediately got it registered as Principal employer and at a such belated stage, the licence was obtained by the Contractor. He has further submitted that petitioners have been allotted quarters and if the petitioners were not working with the University, the question of allotment of quarter would have never arisen. All these facts have been established before the learned Tribunal. However, the learned Tribunal without looking to the facts on record,

rejected dispute of the reference, which is ex-facie, illegal and contrary to evidence on record.

11. Mr.D.G.Chauhan learned advocate appearing for the respondent university has relied upon submissions which are made in the earlier group of petitions and submitted that the Industrial Tribunal has rightly came to the conclusion that there is no jural relationship of master and servant between the university and the workmen. He has therefore submitted that petition filed by the workmen deserve to be dismissed with costs.

12. After having heard the learned counsel for the respective parties and after having gone through the documentary evidences as well as award passed by the Industrial Tribunal and the Labour Court which are the subject matter of all these petitions, the Court is of the view that workmen are not the employees of the petitioner university and there is no relationship of master and servant between the respondent and the workmen. It is on record that barring five workman no other workman

has completed 240 days and the same has been even admitted by the workmen by producing documentary evidence to that effect before the Labour Court. All the workers have not come forward to give their evidences except only two persons, that too, without producing any evidence on record. The Labour Court has proceeded on the footing that they were the employees of University and simply drew the presumption which is not germane from the record of the case.

13. After having considered the entire facts and circumstances of the case and the settled legal position on this issue, the Court is of the view that labour court has committed an error in holding that the workmen are employees of the University and awarded reinstatement with 60% backwages. The court is therefore, of the view that Industrial Tribunal has taken the correct view in the matter while rejecting the claim of the workmen to regularize their services as basically there is no relationship of master and servant between them. Even the Court has inquired with regard to the

present status of the petitioners and whether are still in service. Nobody except one Mr.Ganga Balu Parmar is on service as an employee of the contractor.

14. Before parting it is clarified that since there is one of the respondents viz. Ganga Balu Parmar is stated to have been in service vide letter dated 20.02.2006, his service condition may not be disturbed as a result of this order.

15. After ascertaining the aforesaid factual position, the Court does not see any justification to entertain the petition filed by workmen and the petition filed by the University deserves tobe allowed. Accordingly, award passed by the Labour Court in Reference (LCJ) No.316 to 346 of 1990 is hereby quashed and set aside and the award passed by the Industrial Tribunal in Reference (IT) No.46 of 1986 on 18.10.2004 is hereby confirmed. Accordingly, S.C.A.No.3686 of 1999 with S.C.A.No.4350 of 1999 to 4379/1999 are hereby allowed and rule is made absolute whereas

S.C.A.No.1961 of 2005 is dismissed and rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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